

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0534

MANDATORY PENALTY
IN THE MATTER OF

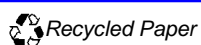
OLIVEHURST PUBLIC UTILITY DISTRICT
WASTEWATER TREATMENT FACILITY
YUBA COUNTY

This Complaint is issued to the Olivehurst Public Utility District (hereafter Discharger) pursuant to Water Code section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2004-0094 and R5-2010-0074 (NPDES No. CA0077836).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the community of Olivehurst. Treated municipal wastewater is discharged to the Western Pacific Interceptor Drainage Canal, a water of the United States and a tributary to the Bear River.
2. On 9 July 2004, the Regional Water Board adopted WDRs Order No. R5-2004-0094 to regulate discharges of waste from the wastewater treatment facility (WWTF). On 27 May 2010, the Regional Water Board adopted WDRs Order No. R5-2010-0074, which contained new effluent requirements, and rescinded Order No. R5-2004-0094, except for the purpose of enforcement.
3. On 16 June 2008, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability (ACL) Complaint R5-2008-0533. The ACL Complaint charged the Discharger a civil liability in the amount of \$132,000, which represented Mandatory Minimum Penalties (MMPs) for effluent violations (identified in Attachment A to Complaint R5-2008-0533) that occurred from 1 January 2000 through 30 November 2007. Olivehurst Public Utility District was determined to be a small community for purposes of Water Code 13385(k). The ACL Complaint allowed the Discharger to apply the \$132,000 penalty towards the \$25.1 million compliance project conducted by the Discharger to expand and upgrade the wastewater treatment facility, pursuant to Water Code section 13385(k). The Board considers payment of the MMPs specifically listed in Attachment A to ACL Complaint R5-2008-0533 satisfied through completion of the compliance project.
4. On 13 February 2013, Central Valley Water Board staff sent the Discharger a Notice of Violation and draft Record of Violations (ROV) for the period of 1 January 2009 through

California Environmental Protection Agency



31 December 2012. Board staff subsequently reviewed the ROV and made minor corrections. On 8 April 2013, the Discharger responded to the ROV and requested that a portion of the MMPs be applied towards a compliance project. However, in accordance with the State Water Resources Control Board Enforcement Policy, Central Valley Water Board staff re-reviewed the population of the Discharger's service area, and determined that it exceeds the population limit allowed by Water Code section 13385(k) for compliance projects. Therefore, mandatory minimum penalties assessed under this Complaint are not eligible for a compliance project.

5. This Complaint addresses violations subject to MMPs which occurred during the period from 1 December 2007 through 31 December 2012. These violations are specifically identified in Attachment A to this Complaint as subject to MMPs. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
6. Water Code sections 13385 subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385 subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385 subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

7. Water Code section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom

administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

8. WDRs Order R5-2004-0094 Effluent Limitations B.3., include, in part, the following effluent limitations:

“3. Effluent shall not exceed the following limits (from 30 November 2007 forward).

Parameter	Units	Effluent Limitation		
		Average Monthly	Daily Maximum	Instantaneous Maximum
Nitrate (as N)	µg/L	10,000	--	--
Total Coliform Organisms	MPN/100mL	--	--	23
Organochlorine Pesticides	µg/L	--	ND ⁷	--

⁷...The Discharger shall use the EPA standard analytical techniques that have the lowest detectable level for organochlorine pesticides with a maximum acceptable detection limit of 0.05 ug/l.”

9. WDRs Order R5-2010-0074 Effluent Limitations IV.A.1.d., include, in part, the following effluent limitations:

Total Coliform Organisms. Effluent total coliform organisms shall not exceed:

- i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median

10. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Orders R5-2004-0094 and R5-2010-0074 during the period 1 December 2007 through 31 December 2012. This violation is defined as serious because the measured concentrations of a Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this one (1) serious violation is **three thousand dollars (\$3,000)**.
11. According to the Discharger’s self-monitoring reports, the Discharger committed six (6) non-serious violations of the above effluent limitations contained in Orders R5-2004-0094 and R5-2010-0074 during the period 1 December 2007 through 31 December 2012. One (1) of these non-serious violations is subject to mandatory penalties under Water Code section 13385(i)(1) because the violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **six thousand dollars (\$6,000)**. A detailed list of the alleged effluent violations are included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE OLIVEHURST PUBLIC UTILITY DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **25/26 July 2013**, unless the Discharger does either of the following by **24 May 2013**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **six thousand dollars (\$6,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

PAMELA C. CREEDON, Executive Officer

26 April 2013

Attachment A: Record of Violations
LO: 24-Apr-13

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Olivehurst Public Utility District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0534 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2013-0534" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **24 May 2013**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0534

Olivehurst Public Utilities District
Wastewater Treatment Facility

RECORD OF VIOLATIONS (1 December 2007 – 31 December 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2004-0094 and R5-2010-0074)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
Violations under R5-2004-0094								
1	27-May-09	Coliform	MPN/100mL	23	80	Instant Maximum	3	827839
2	30-Jun-09	Nitrate-N	µg/L	10,000	17,000	Monthly	1	845579
3	5-Jan-10	Organochlorine Pesticides	µg/L	ND(0.05)	0.061	Daily	3	863315
Violations under R5-2010-0074								
4	15-Jun-11	Total Coliform	MPN/100mL	2.2	4	7-day median	3	905557
5	16-Jun-11	Total Coliform	MPN/100mL	2.2	4	7-day median	3	905556
6	4-Aug-11	Total Coliform	MPN/100mL	2.2	4	7-day median	3	908955
7	27-Sep-11	Total Coliform	MPN/100mL	2.2	6.5	7-day median	4	911659

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2012</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	5
Non-serious Violations Subject to MPs:	1
Total Violations Subject to MPs:	<u>2</u>

Mandatory Minimum Penalty = (1 serious Violation + 1 Non-Serious Violations) x \$3,000 = \$6,000